

NOV - 1 2013 1 OCT 2013

To: BOARD OF SUPERVISORS

Subject: CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069)

BY 

DEPUTY

As previously stated in my 2013-08-06 appeal letter, this letter is intended to augment my Appeal, as submitted, of the SLO Planning Commissions approval [2013-05-27, Agenda Item 2] to proceed with the current development plans for the Cave Landing Parking & Beach Access, as additional project scope from originally proposed Cave Landing Trail Extension Project (a portion of the Calif. Coastal Trail).

The intended course of actions by SLO Parks & Recreations Department, for development of the Cave Landing area, historically also called Mallagh's Landing, as approved by the Planning Commission (25JULY2013) **should be nullified and returned to Staff & the Planning Commission.** The project, as it stands, has major design problems that make it NONCONFORMING to approved Coastal Development Plans and Ordinances. There are also several procedural issues that warrant it being rejected and referred back to the Planning Commission.

Specific Items that warrant nullification of this project:

- 1) This project is occurring en total, within District #3. The District #3 Commissioner had been appointed two days prior to the Planning Commission Meeting. He therefore reclused himself since he hadn't been party to previous discussions, and abstained from a vote in the decision. Further discussion and subsequent decision should have ceased and been continued to a future Planning Commission Meeting at which time he could adequately represent District #3's residents by casting a vote in that decision.
- 2) This project is NOT in conformance with the SLO Co., San Luis Bay Area Plan, Coastal Plan (dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing). Two items in particular:
 - a. *"Parking area for 100 cars is to be improved."*
 - b. *"The parking area is to be surfaced with a permeable material to control bluff erosion."*
- 3) This project is also NOT in conformance with the Coastal Zone Ordinances (CZLUO). A specific item of which is part 23.04.210 – Visual Resources. *a) Location of Development – ... New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ..."*
- 4) Any infrastructure installed at the base of the beach access trail WILL be damaged. While its installation will temporarily *"improve"* coastal access, it also has the real and eminent potential to cause "closure" due to safety requirements, resulting in an unintended *"decrease"* in coastal access.
- 5) The Commission made its decision, in part, based upon Staff's and County Counsel's input and response to Commissioners' questions. There were a few responses by staff personnel that were ambiguous in nature. I believe those comments were misconstrued by the Commission, and were key in their final vote regarding approval. Therefore, this decision should be revoked such that clarification and definitive answers regarding those elements can be made known to them. Two of note:
 - a. County Counsel was NOT definitive in his response to Commissioners when asked if the option of posting a "Proceed at your own Risk" sign was available to County owned properties. He offered his "belief" that it was not, and Commissioners accepted it as "fact".
 - b. Grant funding is paramount to completion of this project. There is the perception that the grants associated with this project are in jeopardy if not used in the very near future. This is not true.

Each item is appealable in its own right; however, when taken in whole, they essentially compel revocation of the Planning Commission's 25JULY2013 decision to allow this project to proceed in its current form.

Expanded discussions for each item follows

DISTRICT #3 REPRESENTATION IN THE 25 JULY 2013 PLANNING COMMISSION'S DECISION

Commissioner Meyer was nominated and appointed at the 23 JULY 2013 Board of Supervisors' meeting.

The proposed project is entirely within District #3. Due to unfamiliarity with previous discussions regarding the project he stated early in the discussion that he would be abstaining from voting on the issue. This amounts to each and every resident of District #3, including myself, not having a vote regarding a project within that district.

This is completely antithetic to the concept of governmental decision making based upon "representation". What should have occurred, was the entire discussion and decision regarding it, been continued to a future meeting to allow Commissioner Meyer time to familiarize himself with the details of the project such that he could participate in both.

I strongly urge you to nullify the 25 JULY 2013 decision by the Planning Commission based upon this fact.

SLO COUNTY, SAN LUIS BAY AREA PLAN

The following excerpt is taken from the San Luis Obispo County, San Luis Bay Area Plan, Coastal, dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing:

- a. *"Parking area for 100 cars is to be improved. The parking area is to be surfaced with a permeable material to control bluff erosion. Selection of the site and improvements of the parking area is to be consistent with protection of the archaeological resources and geological conditions on the site."*

It is undeniable that this site has cultural and archaeological aspects of great significance. It is also undeniable that there is an active landslide immediately to the East of the parking area. Each needs to be considered in the final designs of the project.

The current topography of the parking area causes the primary water flow to the South, with a portion of that southward flow directed to the East. Due to its slope and surface area, the volume of water flow into the landslide complex from the parking area is negligible when compared to the volume from the terrain immediately to the North of the complex. [See **FIGURES 1 & 2** on the following two pages.]

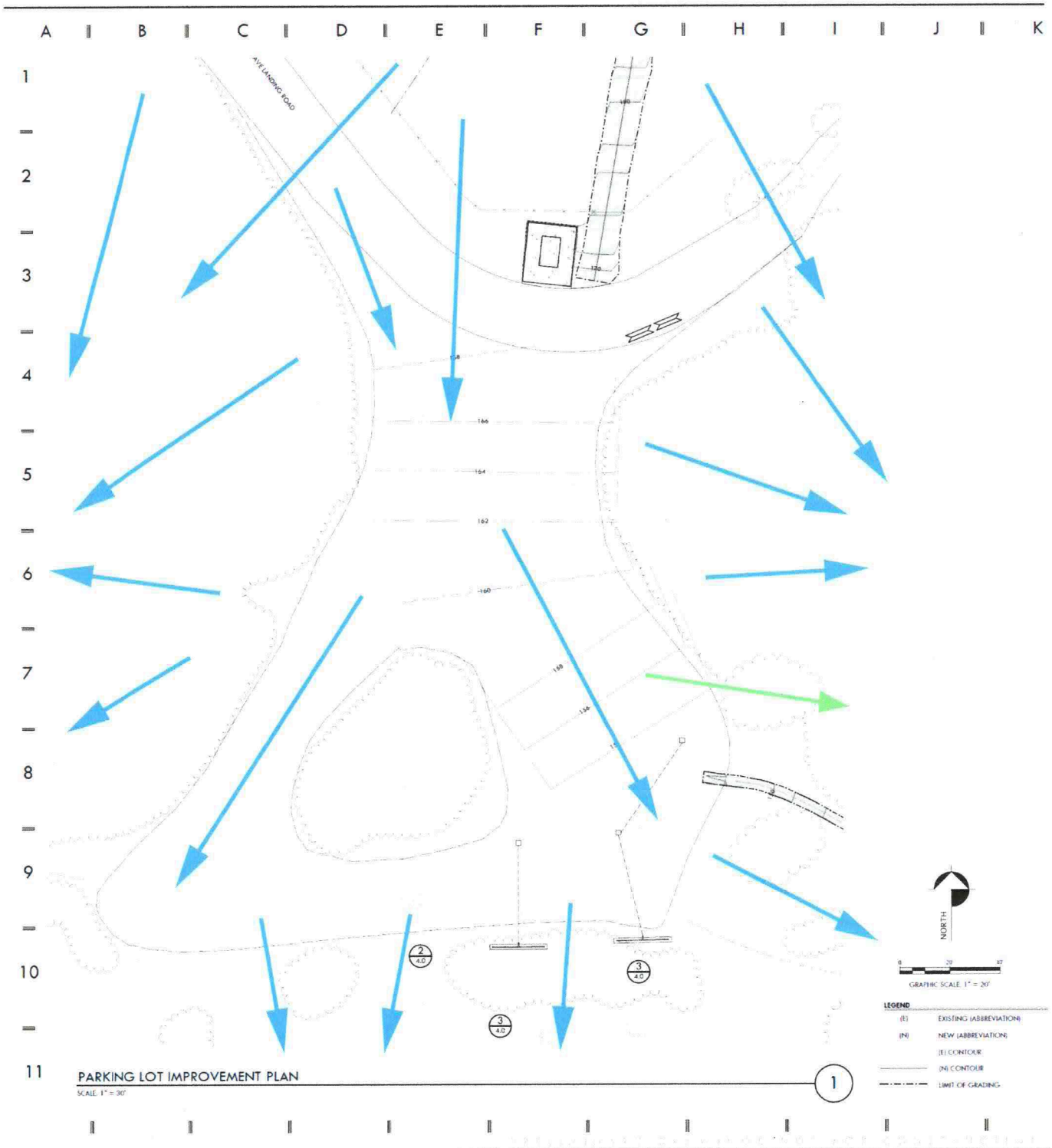
While the design needs to address this issue, it must also reflect the proportionally negligible impact upon the landslide complex by the parking area. The only true issue regarding this runoff is the potential for rutting (erosion) of the lot itself based upon use.

Per review of the proposed typical bio-swale [see **Figure 3**], the fundamental aspect is a layer of gravel in which perforated piping is embedded. There is next a layer of engineered soil, with a topping of mulch, in which plants are placed. The water collected by the bioswale is directed to a "level spreader", which again is an area of coarse gravel/stone in which perforated piping is embedded.

One must make the assumption that the engineered soil used in the bioswale is primarily of a clay and sand nature, as clay absorbs and retains the most amount of water in comparison to other soil types and sand allows porosity.

It is my understanding that there is significant, yet variable depth of non-native soil that has been placed above the native soil. By numerous personal observations, this added soil is of high clay composition.

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The BLUE arrows represent natural water flow from the surrounding hills, and upon the parking lot. As can be seen, most of the water that enters or falls upon the parking lot, generally travels to the South, spilling down the bluffs to the ocean. VERY little water, enters from the parking area itself. The GREEN arrow at grid 7-H, again represents the parking area's generalized, if any, water contribution into the landslide complex.

The county continually cites that this layer has compacted over time such that it is no longer pervious. I'll basically accept that statement as fact. They state that the level of disturbance to make this compacted layer completely pervious would impact the native soil below. I'll accept that statement generally as fact as well. Staff then extrapolate that those issues *necessitate* the current design of an asphalt pavement with bioswales to mitigate the runoff from the area. **I adamantly disagree** with that conclusion. In fact if that were completely true, why not simply grate the existing impervious soil to channel water flow away from the landslide area?

I believe it is readily apparent that the design elements of a bioswale and associated level spreaders can easily be incorporated into the parking surface itself [see **FIGURES 3 & 4**, following]. That is, the current layer of non-native clay soil be graded and leveled to the degree necessary to evenly spread an added layer of gravel with perforated piping as required to protect the landslide complex and ultimate runoff to the ocean. By raising the South end of the parking area, and graduating the gravel layer in depth, with the greatest depth at the South end, lowest depth at the North end, this will both decrease the slope of the parking area, further reducing runoff velocity and its eroding effects, and allow the largest volumetric water retention at the southern end where it would naturally want to flow.

Additional engineered soils would then be added above the gravel layer to obtain a permeable topping, such as pea gravel mixed with clay & sand or decomposed granite.

The above approach addresses all the stated limitations and goals of this project, yet still maintains the San Luis Bay Coastal Plan requirement that this be a permeable surface to control bluff erosion.

This is an incredibly beautiful section of the California Coastline. Its beauty is not only due to its scenic views, but also its essentially pristine undeveloped state; yet it provides Public access to and upon it for the Public's ability to appreciate that beauty. It is close to urbanized towns and cities, yet in its current condition retains a rural nature and the sense of tranquility associated with that type of setting. An asphalted parking area would indelibly negate the rural and pristine aspects of this area, and is inconsistent with the local Coastal Zone Ordinances regarding visual impact.

The most obvious of which is Ordinance:

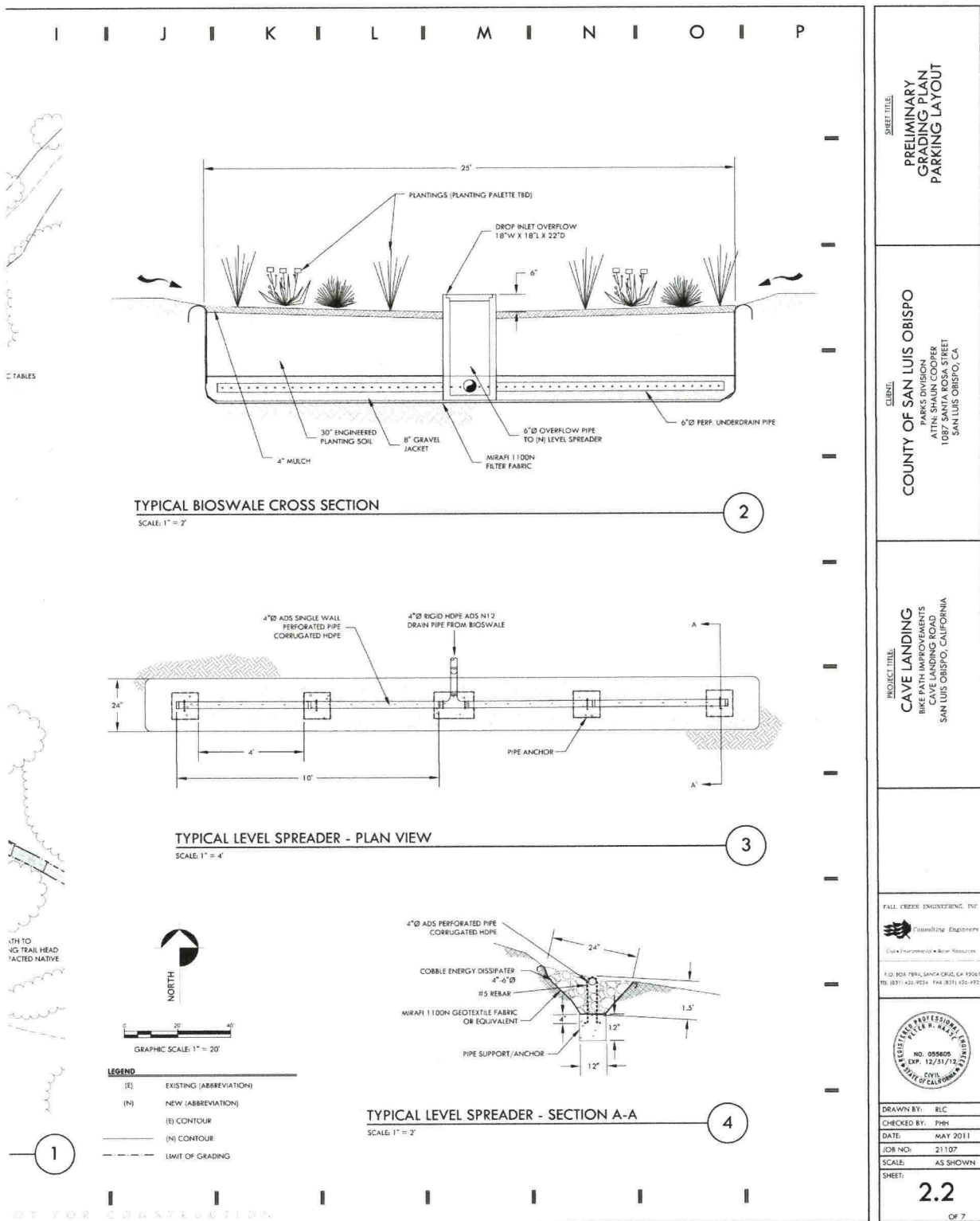
23.04.210 – Visual Resources - ... New Development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. ...

Also, asphalt paving is NOT consistent with the following Policies:

- a) Visual and Scenic Resources: *Policy 4: New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors.*
- b) Shoreline Access: *Policy 8: Minimizing conflicts with Adjacent Uses. ...Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

The parking lot surfacing by asphaltting will have significant negative impact of the "public view corridors" from both the re-located Cave Landing Trail, and from the Ontario Ridge Trail, due to their elevation being above the elevation of the parking lot. It will not be "subordinate to, and blend with, the character of the area," especially with regard to "**materials**" and "**color**".

Furthermore, by reducing the number of available parking spots on the site in it's current condition, it will significantly affect current burdens to shoreline access. With completion of the Cave Landing Trail, it will only increase the number of vehicles utilizing the trail, thus causing inevitable burdens to future shoreline access.



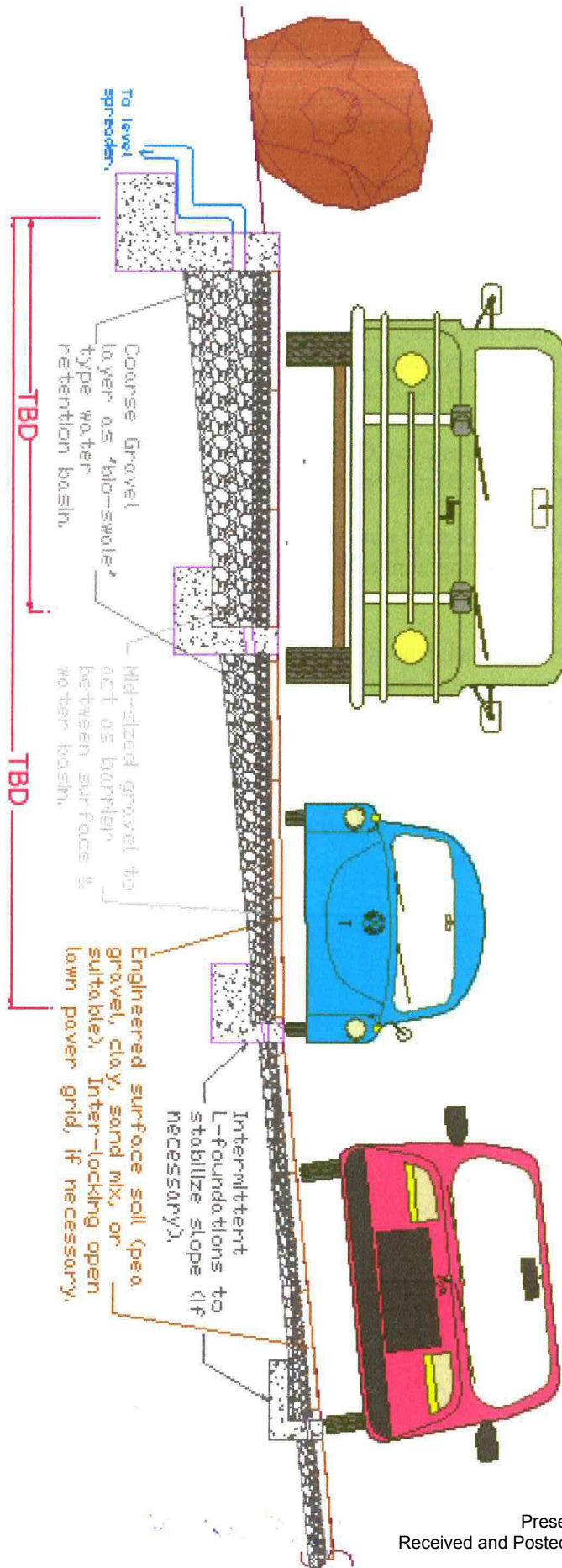


FIGURE 4: SOUTH END OF PARKING AREA (LOOKING WEST), SHOWING PARKING ON "BIO-SWALE"-STYLE DESIGN CONCEPT

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Additionally, by retaining the parking area in a similar rural nature within the same footprint that has existed for about two decades, it eliminates the need to invoke Ordinance "23.04.164 Parking Design Standards – Requirements for parking space size, isle width, and driveway standards"

Per current design, 65 of the 70 spaces per the revised plan are on the "footprint" of the current parking area south of Cave Landing Road. The remaining 5 spaces are along the north side of the road and are already utilized for parking, so they do not contribute to "new" parking. Per correspondence dated May 22nd, 2013 by Whales Cave Conservancy to the SLO Co. Planning Commission, the current footprint can and does accommodate 70-75 vehicles. A reduction from up to 75 vehicles to the new delineated parking of 65 vehicles, is a significant decrease [13.4%]. Thus it does not conform to either use burdens of the area per Shoreline Policy 8's, "*burdens on access to the shoreline at the present time or in the future,*".

There also seems to be a misperception by many involved in this project that the Public is requesting a design that accommodates maximum capacity on particularly days which would occur seldom during the year [*specifically refer to Parks' Director Mr. Black's comments at the Planning Commission's 23MAY2013 mtg and Mr. Duff's comment at the 25JULY2013 mtg.*]. Recent car counts have revealed that parking of 100 plus vehicles in this area occur very often, and are NOT of an infrequent nature. I've attached a 3 month graphic provided by the Whales Cave Conservancy via correspondence dated July 10th, to the 25JULY2013 Planning Commissioner's Meeting [see Attachment 1].

This misperception also completely ignores the obvious facts that the proposed development of the well-used Ontario Ridge Trail and development of the Avila Point Area, WILL increase users of this area over and above its current users.

The above, non-paved approach leaves open the discussion regarding the Coastal Plan's nominal goal of 100 parking spots for current use, and even more, to these future development projects

As a final note: If one studies the details of the proposed bio-swale, shown in Figure 3, it has a depth of at least 42 inches. In the original plans, these bio-swales were to be constructed in the SAME area that I am proposing an alternative design [See **FIGURE 5** below]. Forty-two inches, FAR exceeds what is my understanding of depth of previously added material to the parking, and would have significantly impacted native soil during its construction.

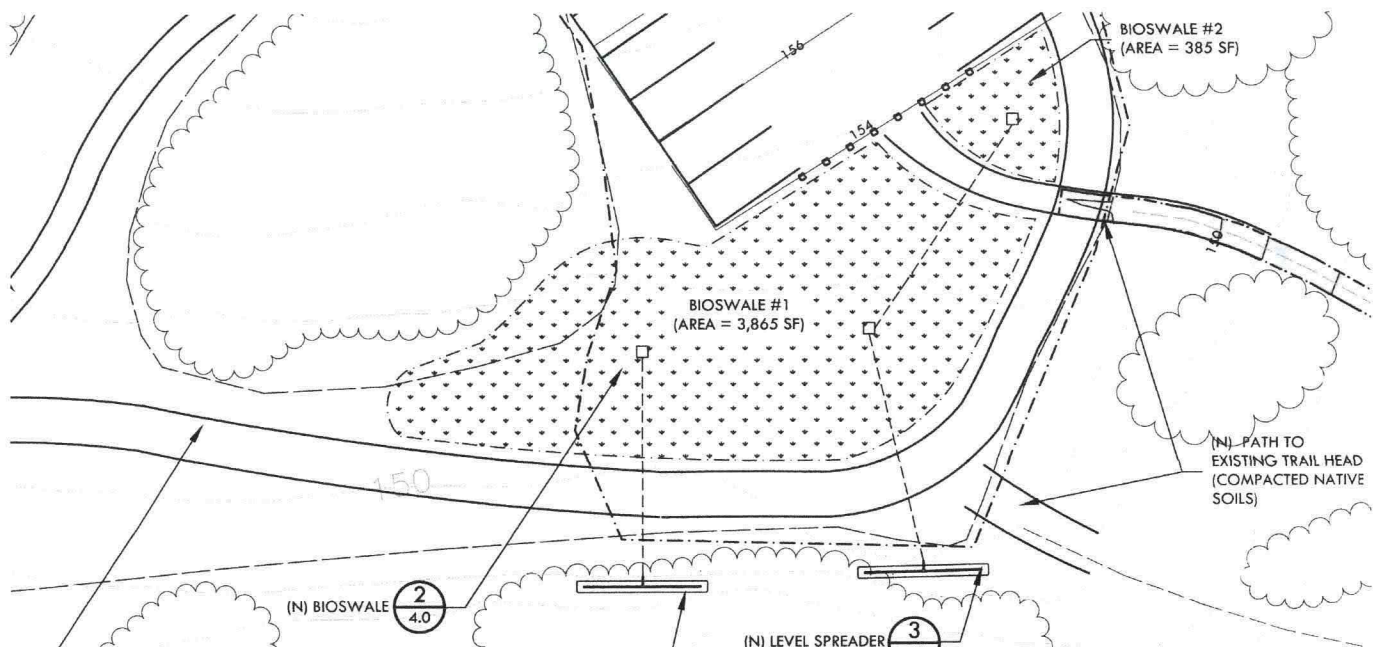


FIGURE 5: SOUTH END OF PARKING AREA PER COUNTY'S ORIGINAL DESIGN

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COASTAL ACCESS CLOSURE DUE TO DAMAGE AND SAFETY CONCERNS

This issue was discussed in detail by Public correspondence provided to the Planning Commission 25JULY2013 meeting. I trust you will review those documents. To stress the main points of my correspondence to that meeting:

There are many rocks and boulders that have been deposited in the beach access area. Winter storms, due to their southern swell nature, along with the ocean topography concentrate the energy and force of those waves into this corner of the beach. Combined, ANY man-made structure will be damaged and ultimately destroyed. [Note: The closed staircase picture to the right immediately following, is at the East end of Avila Beach proper]



A minimalist approach for beach access “improvement” must be taken to avoid the codes, ordinances and regulations associated with man-made infrastructure which would cause a real and present danger of decreasing coastal accesses precisely because of these “improvements”. There is an inherent issue with re-enforced concrete structures in saltwater environments, called “spalding”. Saltwater seeps through the inherent cracks in the concrete, rusting the rebar, which expands, placing pressure on the concrete which causes a widening of the cracks, exposing more rebar and the degradation cycle accelerates until it crumbles.



Recognition of this fact was evidenced by a last minute inclusion of Exhibit B, Revised Conditions of Approval, item 28, Access. I commend both Planning Staff and the Planning Commission’s inclusion of this new Condition. Its inclusion should remain in some form in all current and future proposals to develop this area. However, the current designs have NOT incorporated that new design requirement. Item 35 - 11/5/2013

Nullification of the 25 JULY 2013 decision regarding this project will allow more time for Public input to and a design that will best achieve this concept, prior to “Construction Phase”. Presented by: Brian LoConte Received and Posted on the web: 11/1/2013 Page 9 of 18

AMBIGUITY REGARDING COMMENTS TO THE PLANNING COMMISSION

I commend the Planning Commissioner's questioning of various County Staff Personnel regarding the concerns and comments made by the Public.

However, there are several items that were answered by staff personnel in an ambiguous manner. I'll cite and expound upon two items in the project discussion that I believe were key elements in the Commissioners' decision to cast YES votes to the project as presented, and if answered more definitively, it may have caused them to cast a NO vote.

QUESTION OF LIABILITY:

On several occasions, County Counsel was questioned regarding liability issues. Of particular note were questions re: the option of posting signage stating something to the effect of "Proceed at your own Risk".

While I'd intended to cite video time stamps, I'll simply paraphrase Counsel's statements: "I *think* that's not an option," "I *believe* that is an option only for private land-owners, not Public land-owners," "that's what I *believe*." [Please review video, on your own, for specifics.]

I was able to find the following legal references via the internet. All, on the surface, seem to completely contradict County Counsel's advice to the Planning Commission:

GOVERNMENT CODE SECTION 815-818.9

815. Except as otherwise provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

[et. Seq.]

**California Recreational Use Statute
CIVIL CODE
DIVISION 2: Property
PART 2: Real or Immovable Property
TITLE 3: Rights and Obligations of Owners
CHAPTER 2: Obligations of Owners**

§846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding,

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winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

HISTORY: Added Stats 1963 ch 1759 s 1. Amended Stats 1970 ch 807 s 1; Stats 1971 ch 1028 s 1; Stats 1972 ch 1200 s 1; Stats 1976 ch 1303 s 1; Stats 1978 ch 86 s 1; Stats 1979 ch 150 s 1; Stats 1980 ch 408 s 1; Stats 1988 ch 129 sec 1.

Also,

California Government Code § 831.2 - Natural condition of unimproved public property.

Neither a public entity nor a public employee is liable for any injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach.

California Government Code § 831.4 - Unpaved access roads to recreational or scenic areas; trails; paved paths on easements of way granted to public entities.

A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition.

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of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Just such a clause was inserted by Monterey County:

http://scc.ca.gov/webmaster/ftp/victorine/gd_ex_c_pubtraileasmnt_apn243-211-026.pdf

PUBLIC ACCESS TRAIL EASEMENT
EXCEPTED AND RESERVED TO THE STATE OF CALIFORNIA

APN No. **243-211-026-000**, Monterey County

The State of California ("State") expressly excepts and reserves to itself, through the State Coastal Conservancy ("Conservancy"), the following Public Access Trail Easement, from the grant of real property to [GRANTEE] ("Grantee" or "Property Owner"): ...

9. Liability.

- a) Immunity under Applicable Law. Nothing in this Agreement limits the ability of Property Owner and the State to avail themselves of the protections offered by any applicable law affording immunity to Property Owner and the State.
- b) Public Enters at Own Risk. Use of any portion of the Easement by members of the general public is at their own risk. Neither Conservancy, nor its successors or assigns by retaining this Easement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Trail Facilities; for any unsafe conditions within the Easement; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. The Conservancy or its successors or assigns will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Conservancy receives actual notice of the need to repair an unreasonably dangerous condition.

The option to "leave things as they are" with appropriate warning signs, was therefore indeed a viable option to the Planning Commission, yet since they believed it was not an option did not pursue it.

AVAILABILITY AND LIMITATIONS RE: FUNDING:

At the 25 JULY 2013 Planning Commission Mtg., the issue of Grant Funding was questioned, and Parks responded with the following:

- 1) There are three sources of Grant funding
 - a. Approximately \$750,000 has already been obtained from the California Dept. of Fish and Game (CDFG) and was funded via the Avila Beach Oil Spill Settlement with Unical.
 - b. California Costal Conservancy is prepared to grant \$350,000 to the project, when there is an approved project.
 - c. The San Luis Obispo Council of Governments (SLOCOG) is prepared to provide matching funds of \$350,000.
- 2) When questioned regarding expiration date for the CDFG funds, Parks stated that the funds must be "used by" September 2014.

It is unquestionable that this caused the Committee Members to presume potential loss of that funding if the project was not approved as was currently proposed.

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Per the documentation I have reviewed, the SEPT 2014 date is consistent. However, ...

I now refer to a letter dated March 2, 2012 from SLO Parks to the Calif. Dept. of Fish & Game, Re: Cave Landing Bike Path, (Agreement Number R-14 2002) Accounting of Expenditures & Quarterly Status Report through Dec 2011, citing specific entries made in Table 1 – Status Report.

June 27, 2002 contract signed by all parties. Contract is complete.

March 16, 2005, received Grant Agreement Addendum from Department of Fish and Game (DFG) for signatures.

April 12, 2005, forwarded signed Grant Agreement Addendum to National Fish and wildlife Foundation for signatures.

April, 2008- discussed possibility of adding a liability section in the Agreement Addendum.

May 19, 2008- agreement Addendum draft submitted to CDFG for review.

July 30, 2008 Agreement Addendum signed

December 23, 2008- County closed escrow on the purchase of property adjacent to path.

January 21, 2009 – on site meeting with County staff, CDFG staff, and Coastal Commission staff to discuss the status of the project and the possibility of additional funding.

January 30, 2009 – requested an additional \$353,745 from CDFG to complete the construction of the project.

February 11, 2009 – County received approval from CDFG for additional \$353,745.

February 24, 2009 – Amendment to grant agreement executed, increasing funding for the project by \$353,745.

Notes:

- 1) there was no associated entries in the above letter for the April-June 2011 period re: Agreement Addendum.
- 2) I have a note to myself in the documentation I obtained during my review of documents granted to me by my May 2013 request per the California equivalent to the Federal Freedom of Information Act, that states, "Q: What extends F&G past June 24, 2011?" This implies I read something that indicated the Grant needed to be extended.

I was explicitly searching for documents associated with details regarding conditions & terms associated with the Grant funding, see **Attachment 2**, Item 4 *[only the letter to Planning is attached, since the letters I submitted to Parks and the Clerk Recorder are substantially the same except for the Addressee]*.

Since I have no copy of the original 2002 Agreement, the 2005 Agreement Addendum, the 2008 Agreement Addendum, nor the presumed 2011 Agreement Addendum [to have NONE implies that these documents were not made available to me], I can not specifically confirm the following, but based upon the 3 year periodicity of the Agreement Addendum, and the known fact that the Grant funding expires during the same period in 2014, I can logically conclude that this Grant funding has been extended three times.

Therefore, it is also logical, that should the need arise, there is every expectation that a similar extension via an Agreement Addendum would be obtained.

Since neither the California Coastal Conservancy nor SLOCOG yet actually granted their funding, **the presumptive notion by the Planning Commission that the Grant funding was in jeopardy, was unfounded**, as should be yours.

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CONCLUDING SUMMARY:

The CAVE LANDING AREA IMPROVEMENTS (DRC 2011-00069) project, as approved by the SLO Planning Commissions, warrants nullification by this Board of Supervisors for the following reasons, all or in part:

- 1) This project will occur, en total, within District #3. The District #3 Commissioner abstained from a vote in the decision. **The decision to continue proceedings is completely antithetic to the concept of governmental decision making based upon "representation"**. What should have occurred, the entire discussion and decision to have been continued to a future meeting to allow Commissioner Meyer time to become familiarized with the details of the project such that he could have participated in the vote.
- 2) The Commission made its decision, in part, based upon Staff's and County Counsel's input that were most likely misconstrued by the Commission, and were key in their final vote regarding approval
 - a) County Counsel was NOT definitive in his response to Commissioners when asked if the option of posting a "Proceed at your own Risk" sign was available to County owned properties. He offered his "belief" that it was not, and Commissioners accepted it as "fact". **ALL laws that I have found, indicate that the option to "leave things as they are" with appropriate warning signs, was indeed a viable option** to the Planning Commission, yet since they believed it was not an option did not pursue it.
 - b) Documentation suggests that original Grant funding allocated in 2002, was renewed in 2005, 2008 & 2011. Therefore, every expectation exists, that should the need arise, the current expiration date of AUG/SEPT 2014 will be extended again. Thus, **the false the perception that the grants associated this project are in jeopardy** if not used in the very near future, **was fundamental in the Planning Commission's approval.**
- 3) Addition of a concrete staircase at the base of the beach access trail will be damaged, and **will ultimately decrease coastal access** due to its inevitable closure due to safety standard.
- 4) **This project is NOT in conformance with the SLO Co., San Luis Bay Area Plan**, Coastal Plan (dated March 1, 1988, Certified by California Coastal Commission February 25, 1988, Revised August 2009, Page 8-6, item 7. Shoreline Access – Mallagh Landing). Two items in particular:
 - a. *"Parking area for 100 cars is to be improved."*
 - b. *The parking area is to be surfaced with a permeable material to control bluff erosion."*
- 5) **This project is also NOT in conformance with the Coastal Zone Ordinances (CZLUO).** A specific item of which is **part 23.04.210 – Visual Resources.** *a) Location of Development – ... New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinated to, and blend with, the character of the area. ..."*

Additionally, **asphalt paving is NOT consistent with the following Policies** in this setting:

- a) **Visual and Scenic Resources: Policy 4:** *New Development in Rural Areas. New development shall be sited to minimize its visibility from public view corridors.*
- b) **Shoreline Access: Policy 8:** *Minimizing conflicts with Adjacent Uses...Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

I strongly urge you to nullify the Planning Commission's decision of 2013-07-25 and refer the project back to Staff to resolve design issues that do NOT conform with the Local Coastal Development Plan & Ordinances.



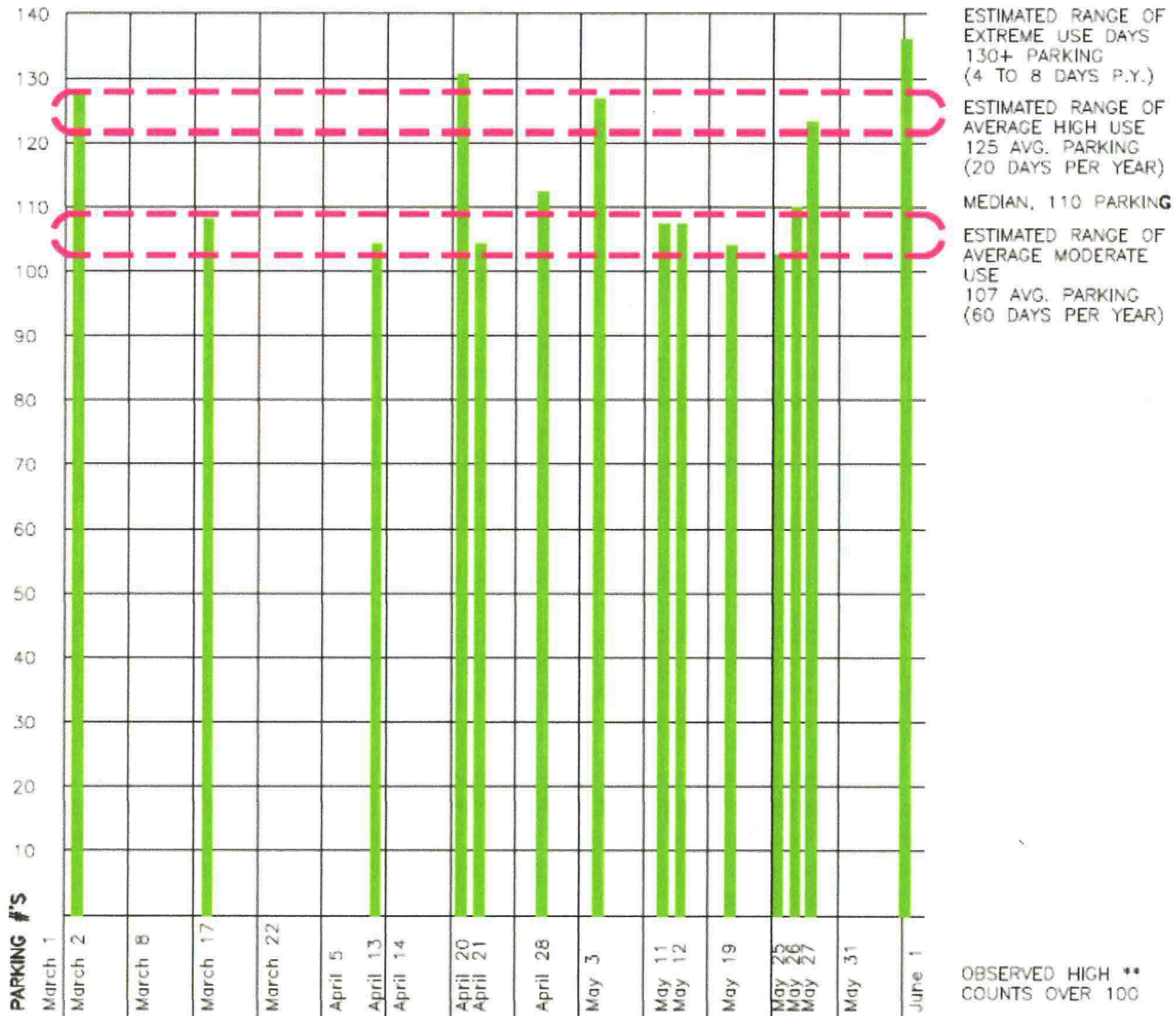
Brian A LoConte
Irish Hills Resident [District #3]

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ATTACHMENT 1 - FROM WCC PUBLIC CORRESPONDENCE

THREE MONTH PARKING COUNTS

MARCH 1ST TO JUNE 1ST 2013



BASIS OF ANALYSIS:

The data collected for this analysis is derived from parking counts taken at one time during popular beach days. Usually Friday Saturday and Sunday. These are recorded as part of a separate Blog "CoveVB". Observation has revealed that these counts may be short of peak as some counts taken later in the afternoon (2 to 2:30PM) show more use. As a result of this sampling, we believe that the Estimated "Average High Use" is closer to the "Average Moderate Use". We therefore feel that the intent of both AVAC and San Luis Obispo County Planning Commission can be minimally met with a set goal of 120 to 125 parking spaces as representative of "Existing Use".

Note: Even with the parking at 125 spaces and no additional interest in the New Park, there will already be twenty days without adequate parking.

Note: Additional impacts from the development of the (Former) UNOCAL Tank Farm property should be taken into account. The long range parking requirements for this park.

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ATTACHMENT 2 - BA LoCONTE' REQUEST FOR PUBLIC DOCUMENTS

To: Kami Griffin
SLO Co. Planning Dept, Assistant Director
976 Osos St
San Luis Obispo, CA 93408

SUBJECT: REQUEST FOR PUBLIC RECORDS

20 MAY 2013

Dear Ms Griffin:

While this letter should be unnecessary, since I previously submitted an essentially identical letter to the County Clerk-Recorder, which should have been sufficient to require this request be honored by ALL involved SLO Co. departments, I am also submitting this request directly to your department and to Parks & Recreation.

Under the **California Public Records Act § 6250 et seq.**, I am requesting an opportunity to obtain copies of (preferred) or inspect public records that pertain to:

1. Acquisition by the County of San Luis Obispo of the lands in the area known as Cave Landing / Mallagh's Landing / Pirates Cove and upon the area known as Ontario Ridge. Both past acquisitions and intended future acquisitions.
2. All public records regarding development of those lands, including all past and present revisions and future intent.
3. This includes all correspondence, both written and electronic to/from private individuals, other governmental agencies, quasi-governmental agencies (such as Avila Valley Advisory Council) and intra-agencies to the extent allowed by law as well as any documented summaries of meetings associated with the above requested information.
4. Additionally, all internal budgetary documents associated with past, present and future funding, including the amount, terms, conditions and stipulations of any grants, deeds, etc associated with external funding regarding those lands and their development.

I request any document or drawing that was intended to be larger than 8.5"x11", be provided in the intended size.

I am open to proposals of receiving the requested documents via electronic storage, as long as the contents are able to be stored, reproduced and distributed as individual documents in readily available formats, such as Microsoft Office and Adobe; contact me if that is desired/preferred.

This information is not being sought for commercial purposes.

If there are any fees for copying these records, please inform me if the cost will exceed \$100. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the San Luis Obispo County's intent and details of planned development of these areas, which hereto, has not been forthcoming.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies (preferred) or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

Brian A LoConte

[Address & phone # redacted]

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ATTACHMENT 3 - BA LoCONTE'S CORRESPONDENCE TO 2013-07-25 PLANNING COMMISSION MTG.

My main letter to the 25 JULY 2013 Planning Commission was dated, 22 JULY 2013 and is included in the official correspondence for this BOS Mtg. However, I submitted a second letter at the meeting itself. For unknown reasons, it is not included in the County's package of Public Correspondence, so I have attached it to this letter for your review.

PLANNING COMMISSION

Subject: CAVE LANDING AREA IMPROVEMENTS

AGENDA ITEM: 2
DATE: 7/25/13 25 JULY 2013

Members of the SLO PLANNING COMMISSION,

DO NOT REMOVE FROM FILE

This is a supplemental letter to my original letter dated 22 JULY 2013.

As mentioned in my previous letter, the documents associated with agenda item 2, were not available via the county website. I had assumed the problem was temporary and would be corrected. However, since they had not as of 24 JULY, I called the Planning Commission secretary and found that the provided link was in transition and not functioning. She walked me through an alternate means of obtaining the source document. Thus, I have had only approximately half a day to read, digest, and comment on the details contained in those documents. [My comments are given at the end of this letter].

Overall, this is a prime example of my previous contention in the 22 July letter, and in my comments to the Planning Commission during their 23 MAY 2013 meeting that the crux of the problem is that the Public review and comment process regarding this issue (and most like all projects) is that the process is FUNDAMENTALLY FLAWED with no meaningful "Public Input".

This project has been in the developmental stage since 2002. Significant progress was realized in 2007-2008, and draft finalized plans were prepared in 2011. Yet, the first time I became aware of the extent of the project, without any meaningful details, was in Jan/Feb of 2013.

It was at that time, I was made aware by others that County would make a presentation to the Avila Valley Advisory Council (AVAC) regarding a proposal to accept previous offers-to-dedicate the Cave Landing / Mallagh's Landing / Pirates' Cove Beach (Parcel 5, 54PM36), which I attended but did not speak.

Next was the 26 FEB 2013 Board of Supervisor's (BoS) Meeting. I attended, and provided public comment re: my support of the conceptual aspect, but my concerns and apprehensions of it and future development. At that point the BoS directed Parks to get contact information from the concern citizens present, and to make them aware of future public comment opportunities.

I was NEVER contacted, nor were others who provided contact info. It was by word-of-mouth that I became aware that Parks would make a presentation to AVAC at their MAY 2013 meeting. I spoke at that AVAC Mtg, and I believe, helped them understand the over-riding issues re: this project.

Subsequent to that meeting, and just prior to the Planning Commission 23 MAY 2013 Mtg, I was invited to discuss my concerns with Parks. ALL of the issues I have raised to date were discussed in conceptual form at that time. Parks provided me some bases for their plans, but NOT in the detail that was necessary for me to provide any significant Public Input.

I attended and am on public record with both a submitted letter and public comment at the 23 MAY 2013 Planning Commission Mtg.

Subsequent to that meeting, I submitted the California version of the Freedom of Information Act request for information regarding this project. Monetary costs of that request are approx. \$120. Essentially all the detailed information I have regarding this project stems from that request. Even so, since this project is in a highly sensitive Cultural area, and the Freedom of Information Act specifically precludes making details of this subject available to the general public, there is still MUCH more that I would like to know.

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There is something **FUNDAMENTALLY WRONG** with the public review and comment process when an individual has to resort to a Freedom of Information request and associated monetary expense to gain enough detailed information to draw evidentiary conclusions regarding the project.

I did receive notification of the proposed discussion/proposal for furtherance of this project at both the JULY 2013 AVAC Mtg, and this 25 JULY 2013 Planning Commission Mtg. In the interest of civility, I will refrain from comment my feeling re: the "tone" of this notification.

I did attend the AVAC Mtg, and was able to get a copy of the 70 vehicle parking lot updated.

After MUCH effort, I was finally able to gain the minimal details made available to the public regarding this project as it relates to this agenda item.

If one objectively reflects upon my experiences regarding "public input" for this project, the overall process boils down to this:

- 1) The project is developed with input mostly from internal departments, with limited input from regulatory required organizations.
- 2) Presentation to the area's Advisory Council. [Basically lip-service to "public comment/input"]
- 3) Presentation to the Planning Commission. ["Public comment" is reactionary; either by letter or 3 min oral comment.]
- 4) Presentation to the Board of Supervisors. ["Public comment" is reactionary; either by letter or 3 min oral comment.]

Therefore, there is no **meaningful** "Public Input" in the process, simply **reactionary** input by plea to the regulatory bodies by the Public. **THE PROCESS IS FUNDAMENTALLY FLAWED!!**

Now that I have the agenda document, I'd like to make a few brief comments:

Please note on Pg. 4, the comments by County Public Works. In part, "Concerns about parallel parking next to the retention basin (parking spaces 25-31). ... Angled parking would put the doors farther from the 'cliff edge'." Upon review of the 70 car design, I estimate that angled parking in the area of spaces 25-33 would result in approx 12 spaces vs the current 9.

Additionally, angled parking at spaces 53, 63, & 64, would result in approx. 5 spaces vs. 3.

I have fundamental concerns re: picnic tables in the area show in the vicinity of spaces 1-7. However, I now understand this is intended for ADA access, and accept it to a degree. Can this space be minimized, both to accommodate only two picnic tables, and increase the distance between spaces 1-5 and 50-53?

I have always visualized this area as a 3-point turn area for fire vehicles. [I also now notice the proposed traffic barrier posts, which should be relocated eastward to facilitate a 3-point turn.]

In my opinion, picnic tables are best located at the south-west end of the parking area. This is where I have observed the most people eating lunch and enjoying the ocean view.

Brian LoConte
Irish Hills, District #3

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